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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

Number 837

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MILTON L. LEIBY, et al.,

Petitioners

v.

CITY OF MANCHESTER, et al.,

Respondents

■

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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Petitioners

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CITY OF MANCHESTER, et al.,
Respondents

■

Petition for Writ of Certiorari to the United States First Circuit Court of Appeals

To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Petition of MILTON L. LEIBY, NAPOLEON ISABELLE, GEORGE PAPACOSTAS, J. SCOUFFAS, WILLIAM JONES, ANDREW KATSALIS, GEORGE D. CARON, JOHN W. DOUGLAS, DOROTHY H. MILLER, HELEN POULOS, AMELIA CHOUINARD, LEAH M. CHOUINARD, ATINA ROUSTEN, shows to the Supreme Court of the United States as follows:

A

Summary Statement of Matters Involved

1. *Statement of Facts.*

The City of Manchester has for many years had in force and effect an ordinance reading as follows:

"CHAPTER 39. *Newsboys and Bootblacks.*

"*Section* 1. No person shall, in any street or public place of the city of Manchester, work as a bootblack, or sell or expose for sale, any newspapers, books, pamphlets or magazines, unless there shall first have been issued to him a badge, as hereinafter provided, nor unless he shall comply with the terms under which such badge shall be issued.

"*Sect.* 2. The superintendent of schools shall issue all badges in accordance with the provisions of this ordinance. He shall issue no badge except upon the application of the parent or guardian or of some responsible citizen of the city of Manchester if the applicant is under fourteen years of age. Upon receipt of the said application properly executed, the said superintendent of schools shall thereupon issue a badge and he shall further keep a record showing the name and age of the applicant and the date of issuing, and he shall retain properly filed, all documents necessary to support the said record. Such badge shall be of a suitable design approved by the board of mayor and aldermen and shall be issued annually on the second day of January and the applicant shall pay a fee of fifty cents for the same, to be returned upon surrender of the badge.

"*Sect.* 3. The said applicant shall conform to the laws of the state of New Hampshire, the ordinances of the city of Manchester, and the regulations of the board

of mayor and aldermen of said city; he shall surrender his badge to the superintendent of schools when notified that his license has been revoked; shall not transfer nor loan his badge nor furnish any unlicensed persons with newspapers or the like, shall not, unless at least fourteen years of age, sell newspapers or the like after nine o'clock in the evening except on days of national, state and city elections; shall not at any time while so working or selling fail to wear conspicuously in sight the badge issued to him as aforesaid.

"*Sect.* 4. Any person who violates any of the aforesaid regulations may have his license revoked by the board of mayor and aldermen upon the complaint of any citizen or public officer and be subject to a fine of not less than one dollar nor more than five dollars for each offense." (R. 7, 8)

Petitioners are Jehovah's witnesses, who are sincere and meek followers of the Lord Jesus Christ and Jehovah God and, as such witnesses, they are ordained ministers of the Gospel of the Kingdom of Jehovah God, the early complete establishment of which they proclaim to the people throughout the land. (R. 27 Exhibit 3) As such ordained ministers, they believe in following in the footsteps of Jesus Christ and His apostles, who set examples for them to follow (1 Peter 2:21) (R. 6), and who counseled that all of Jehovah's witnesses must publicly and on the streets proclaim the Kingdom message, by distributing literature explaining such matters. (R. 29; Proverbs 1:20, 21; R. 28)

As a convenient means of preaching the Gospel as ordained ministers, petitioners have employed the distribution of the *Watchtower* and *Consolation* magazines on the streets, which contain the message of God's revealed Word as to how the Battle of Armageddon is near at hand, and that it will completely destroy all of Satan's organiza-

tion, including the political, ecclesiastical and commercial elements thereof, to be followed by the complete establishment of God's Kingdom in the earth. See Exhibits 1, 2 and 3. (R. 27, 28 and R. 6)

Many times on and after March 1, 1940, the petitioners stationed themselves at strategic spots along sidewalks of the City of Manchester, and exhibited and offered either the *Watchtower* or *Consolation* magazines to passers-by. From some they received a contribution of five cents (5c) per copy, and other copies were given away to people unable to pay for the same. The time of such distribution was usually on Saturday of each week, and each time that petitioners distributed such magazines they were repeatedly arrested and incarcerated and held in jail over the week-end and on Monday were tried, convicted and forced to appeal their cases. Petitioners could not discontinue their God-given work and would not apply for a permit because to do so would have been a violation of God's law. (R. 8, 9, 10, 27, 30)

Petitioners alleged and proved that they had no adequate remedy at law, and that they suffered and would continue to suffer irreparable injury and the loss of their liberty by reason of being continuously incarcerated, prosecuted and interfered with, which cost them great sums of money and which deprived them of their right of freedom of speech, press and worship guaranteed by the Federal Constitution's Fourteenth Amendment, and which conduct, past and threatened, greatly frustrated and practically destroyed petitioners' distribution of literature. Petitioners alleged and proved that their only remedy was injunction. (R. 10, 12, 30) Petitioners at all times refused to apply for a license or badge as required by the ordinance. (R. 19, 20)

The respondents admitted that the ordinance would continue to be applied and enforced as to petitioners and that every time any of Jehovah's witnesses were found distributing *Watchtower* and *Consolation* magazines, as above described, on the streets, without obtaining a badge, they

would each be arrested and prosecuted. (R. 9) On May 18, 1940, petitioners filed in the United States District Court for New Hampshire, their complaint for an injunction setting forth the above facts and challenging the ordinance as being unconstitutional both on its face and as applied to petitioners and asked that the court declare the ordinance void and asked that the future enforcement of the ordinance be enjoined as to petitioners. The trial court on June 29, 1940, on final hearing declared the ordinance unconstitutional and permanently enjoined its enforcement. (R. 14-23) The final decree to such effect was entered on June 29, 1940. (R. 23) The trial court found facts justifying the conclusion that petitioners would suffer irreparable injury and that Jehovah's witnesses did not have an adequate remedy at law. (R. 14-19) The Circuit Court of Appeals recognized such findings. (R. 35)

The respondents duly appealed from such final decree to the United States Circuit Court of Appeals (R. 23, 24) by filing notice of appeal on August 20, 1940.

Respondents' statement of points filed with the United States Circuit Court of Appeals as grounds for reversal presented only two points, namely, (1) that the ordinance was constitutional and (2) that the petitioners did not come into equity with clean hands. The first point was decided in favor of respondents. The last point was not passed upon. (R. 25, 26)

On February 17, 1941, the United States Circuit Court of Appeals, after due hearing, reversed the judgment of the trial court on the sole and only ground that the ordinance was constitutional and had not been unconstitutionally applied (R. 33-41), and on such date entered its judgment accordingly, reversing the judgment of trial court. (R. 41)

2. *Substantial Federal Questions Were Presented.*

In the trial court by express allegations in the bill of complaint petitioners duly attacked the ordinance as being unconstitutional because it, on its face and as construed by respondents, deprived petitioners and other of Jehovah's witnesses of their right of freedom of speech, press and worship of Almighty God contrary to the Federal Constitution's Fourteenth Amendment. (R. 2, 3, 9, 10) The trial court found the ordinance to be contrary to the Fourteenth Amendment for such reasons. (R. 22, 23) The respondents contended in the trial court and in the appellate court that the ordinance did not violate the constitution. (R. 13, 14, 24-26) The United States Circuit Court of Appeals held that the ordinance did not violate the provisions of the Fourteenth Amendment and that the ordinance was constitutional. (R. 33-41)

That by reason of the foregoing there were seasonably presented to the courts below substantial federal questions, and by reason of the decision of the United States Circuit Court of Appeals there are now presented for review substantial questions as follows:

1. Is the ordinance void upon its face because it is vague and indefinite and it vests in the Superintendent arbitrary and discriminatory powers of prior censorship of the press and because it, by terms thereof, unreasonably denies petitioners of their right of freedom of press, contrary to the Federal Constitution's Fourteenth Amendment?

2. Is the ordinance invalid, as construed and applied by respondents, because it has been used to deprive petitioners of their right of freedom of speech, press and of worship of Almighty God?

3. Do the facts as alleged and as found by the trial court warrant the granting of an injunction restraining future criminal proceedings against petitioners and other of Jehovah's witnesses under said invalid ordinance?

B

Reasons Relied on for Allowance of Writ

The questions presented are of national importance and eriously affect the fundamental personal and civil rights f every person within the United States. The Circuit Court f Appeals has rendered a decision on an important federal uestion in a way which is in conflict with applicable deci- ions of this court and has radically and so far departed rom the accepted and usual course of judicial proceedings n federal courts as to call for an exercise of this court's ower of supervision to halt the same.

The effect of the decision of the court below is to *amend* he Constitution of the United States in a manner contrary o law and reasoning expressed in the opinions of this ourt. The Circuit Court of Appeals for the First Circuit as *grafted* a new theory, which is entirely foreign to merican life, onto constitutional law of the nation—which hould be removed and eradicated by this court before it eaches more devastating consequences. The court below eld that the guarantee of freedom of the press does not xtend to "sale" of printed information and opinion, i. e., f money was accepted for the literature distributed that uch transaction took the matter beyond the reach of the hield of the Federal Constitution's Fourteenth Amend- ent. This identical contention was made by the Supreme Court of Errors of the State of Connecticut in the *Cantwell* ase, 310 U. S. 296, which was expressly rejected as "for- ign" by this court. The court below also held that because he ordinance in question 'required one exercising press ctivity to apply for and receive a *badge* from the munici- ality' as a condition precedent to the exercise of press ctivity that such ordinance did not come within the con- emnation of the *Lovell* case, 303 U. S. 444, although the wo ordinances are almost identical in terms. The only dif- erence between the Manchester and Griffin ordinances is

that the Manchester one required a "badge" while the other required a "permit" to be issued by the municipality, as a condition precedent to the exercise of press activity. The distinction made by the Circuit Court of Appeals is frivolous and hypercritical and without merit. The court also held the ordinance did not confer unlimited discretion on the superintendent when, as a matter of fact, the ordinance is clearly condemned by the case of *Yick Wo* v. *Hopkins,* 118 U. S. 356, because it, by its terms, vests arbitrary and discriminatory power in the licensing officials of Manchester, contrary to the due process clause of the Federal Constitution's Fourteenth Amendment.

Petitioners were engaged in the circulation of printed matter containing information about the Kingdom of Almighty God which is to be shortly established in the earth and also containing Bible explanations of present conditions of distress and perplexity prevalent in the earth. There is no distinction or difference between this case and the cases of *Schneider* v. *Town of Irvington,* 308 U. S. 147, *Lovell* v. *Griffin,* supra, and *Cantwell* v. *Connecticut,* supra, all of which announce the constitutional guarantee as to the activity of Jehovah's witnesses.

Another reason relied upon for the allowance of the writ is the fact that the petitioners are ordained ministers of the Gospel of the Kingdom of Almighty God and as such ministers they do not come within the provisions of the ordinance because they preached by publicly distributing literature on the streets concerning these matters and from some who took literature they received contributions to aid in printing and distributing more like literature.

This proceeding instituted by petitioners is identical with the proceedings in the case of *Hague* v. *C. I. O. et al.,* 307 U. S. 496. The Court below should have sustained the judgment of the trial court declaring the ordinance void and restraining enforcement of same, and the reversal of the trial court's judgment was and is contrary to the plainly

stated rule in the *Hague* case, supra, from which announced rule the Circuit Court of Appeals took a very radical departure.

Wherefore your petitioners pray that this Court issue a writ of certiorari to the Circuit Court of Appeals for the First Circuit, directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the trial court be affirmed and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

MILTON L. LEIBY,
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